



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/037,757

10/18/2001

Carol T. Schembri

10004108-1

7503

7590 02/26/2007
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

EXAMINER

FORMAN, BETTY J

ART UNIT

PAPER NUMBER

1634

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

2 MONTHS

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/037,757
Filing Date: October 18, 2001
Appellant(s): SCHEMBRI ET AL.

**MAILED
FEB 26 2007
GROUP 1600**

Bret Field
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 May 2006 appealing from the Office action mailed 29 November 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

Art Unit: 1634

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: New Grounds for Rejection are added to address the citations of Giaever and Dickenson in the rejection of Claims 7 and 18.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3979184	GIAEVER	9-1976
WO 01/18524	DICKINSON et al	3-2001
2001/0051714	CHEN et al	1-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Art Unit: 1634

First paragraph of 35 U.S.C. 112: New Matter

Claims 1-10, 12-20, 22-24 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The term "continuous" is recited independent claims 1 and 14 (from which all other claims depend). The term is used in the claims to define the glass layer. Applicant points to page 9, lines 3-5 wherein the "web" is described. The cited passage describes "Hybridizing Conditions" but does not describe a "web". However, the passage at lines 8-10 states that a "web references a long continuous piece of substrate material having a length greater than a width." The passage defines a web substrate material. In other words, a web is one example and/or one component of the substrate. It is noted that the passage does not define the substrate as a web, nor does the passage define the substrate as elongated. In contrast, the passage merely defines a "web".

Applicant further cites page 4 lines 20-21 for a definition of the substrate. The teaching beginning on page 4, line 19 provides a preferred embodiment of the "assembly" i.e. "assembly has a base layer, a further layer of another material (such as a glass layer) forward of the base layer". The passage defines a physical relationship between the base layer and further (e.g. glass) layer. The passage does not define the further layer as continuous and does not teach that either of the two layers are continuous layers. Applicant further points to Fig. 3, element 14d for an illustration of a continuous glass layer. The illustration is noted. The specification, page 5, line 22-24, states

"FIG. 2 is an enlarged view of a **portion** of FIG. 1 showing multiple ideal spots or features;

"FIG. 3 is an enlarged illustration of a **portion** of FIG. 2".

Art Unit: 1634

As defined by the specification, the glass layer illustrated in Fig. 3 is a portion of the assembly illustrated in Fig. 1. Figure 1 illustrates multiple, individual, discontinuous arrays (12). While Fig. 3 illustrates a “portion” of the assembly having the glass layer. Taken together, figures 1-3 do not illustrate a continuous glass layer as claimed.

The specification teaches a “web” as a continuous piece of substrate (page 9, lines 8-10) and teaches a preferred embodiment comprising a base layer (e.g. plastic) and a further layer (e.g. glass, page 4, lines 19-22). The specification does not teach (or illustrate) a glass layer is continuous; the specification does not teach (or illustrate) a glass layer covers the entire substrate; and the specification does not define the term “continuous” so as to define the illustrated glass layer as continuous. Therefore, the recitation of “continuous glass layer” is deemed new matter.

(10) Response to Argument

Appellant asserts that the specification does teach a continuous glass layer and cites ¶ 0013 and 0036. The specification does not have numbered paragraphs. It is assumed that the paragraph numbers refer to the paragraph numbering of the pre-grant publication. Paragraph 13 describes a glass layer over the plastic base layer. However, the paragraph does not teach that the glass layer is continuous over the plastic base layer or a continuous glass layer as claimed. Paragraph 36 defines a web as a continuous piece of substrate material. Hence, the paragraph merely defines one example of a substrate. However, the paragraph does not describe the web as having layers or a continuous glass layer as claimed.

Appellant further points to Fig. 1, which illustrates an elongated web (10) having a plurality of arrays (12). Appellant points to the specification where it is taught that arrays are arranged end to end along the elongated substrate. The teachings are noted. However, none of the teachings or illustrations defines a continuous glass layer as claimed.

Claim Rejections - 35 USC § 103

Claims 1-6, 9-10, 12-17, 20, 22-24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (U.S. Patent Application Publication No. 2001/0051714, filed 10 January 2001) in view of Giaever (U.S. Patent No. 3,979,184, issued 7 September 1976) or Dickinson (WO 01/18524, published 15 March 2001).

Regarding Claim 1, Chen et al disclose a flexible array assembly (Abstract) comprising a plastic base layer a glass layer forward of the base plate and a metallic layer sandwiched between the glass and plastic layers (§ 66), and an array of polymers having a pattern of features on a front (upper) surface of the glass (§ 57). Chen et al do not specifically teach the light-blocking property of the metallic layer. However, intervening metallic layers having light blocking properties were well known and routinely practiced in the art at the time the claimed invention was made as taught by Giaever and Dickenson.

Giaever teaches a similar assembly comprising a plastic base, a glass layer over the plastic and an intervening metallic layer wherein the metallic layer is "non-transparent" (Column 2, lines 51-57 and Fig. 1) wherein the layered assembly produces "very good" interference colors from visible light and high index of refraction (Column 4, lines 10-20).

Dickenson also teaches a similar assembly comprising a plastic base layer e.g. plastics or optical fiber bundles (page 10, line 32), a glass layer forward of the base plate i.e. glass microspheres (page 16, lines 7 and 10), an array of polymers having a pattern of features on a front surface of the glass i.e. biopolymers immobilized on the arrayed microspheres (page 8, lines 15-22) and a layer between the base and glass layers that blocks illuminating light from reaching the plastic base (page 11, lines 18-25) and wherein the array assembly is flexible i.e. fiber optic bundles (page 10, line 32) wherein the metallic coating provides for more efficient signal collection (page 11, lines 18-19).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the metallic layers of Giaever and/or Dickenson to the metallic

Art Unit: 1634

layer in the assembly of Chen. One of ordinary skill in the art would have been motivated to do so for the expected benefit of more efficient signal collection as taught by Dickenson (page 11, lines 18-10) and/or for the "very good" interference colors from visible light and high index of refraction as taught by Giaever (Column 4, lines 10-20).

Regarding Claim 2, Chen et al disclose the array wherein the polymers are biopolymers (§ 58).

Regarding Claim 3, Chen et al disclose the array assembly further comprising an opaque (metallic) layer between the base and glass layers (§ 66, lines 9-15) and Giaever teaches the metallic layers are opaque i.e. non-transparent (Abstract).

Regarding Claim 4, Chen et al disclose the array assembly further comprising a reflective (metallic) layer between the base and glass layers (§ 66, lines 9-15) and Dickinson defines the metallic layer as reflective (page 11, lines 18-25).

Regarding Claim 5, Chen et al disclose the array wherein the reflective layer comprises a metal (§ 66, lines 9-15).

Regarding Claim 6, Chen et al disclose the array wherein the reflective layer comprises dielectric material as defined by Giaever who also teaches the reflective layer comprises layers of dielectric materials (Column 3, lines 11-47).

Regarding Claim 9, the claimed assembly is defined as having a base layer that absorbs at least 10% of light at 532 nm. The recitation describes functional aspects of the layer but does not describe structural components. Because the claim does not further limit the structures of Claim 4 and because Chen discloses the structural limitations recited in Claim 4, Chen also discloses the assembly as claimed.

The courts have stated that claims drawn to an apparatus must be distinguished from the prior art in terms of structure rather than function see *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA1959). "[A]pparatus claims cover what a device is, not what a device

Art Unit: 1634

does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525,1528 (Fed. Cir. 1990) (see MPEP, 2114).

Regarding Claim 10, Chen et al disclose the assembly further comprising an identifier on the back of the base layer (¶ 118).

Regarding Claim 12, Chen et al disclose the assembly is in the form of an elongated web i.e. elongated (e.g. ¶ 77). It is noted that the claim requires the assembly to “in the form of an elongated web”. The claim does not require the assembly be a web, but merely in the form of an elongated web. Chen et al teach their assembly is elongated (e.g. Fig. 1, 3, 4).

Regarding Claim 13, Chen et al disclose the assembly comprising multiple arrays along the front surface (¶ 57, lines 1-6).

Regarding Claim 14, Chen et al disclose a method of fabricating an array assembly using a with a glass layer bound thereto (¶ 66) and a metallic layer sandwiched between the glass and plastic layers (¶ 66), and an array of polymers having a pattern of features on a front (upper) surface of the glass (¶ 57). Chen et al do not specifically teach the light-blocking property of the metallic layer. However, intervening metallic layers having light blocking properties were well known and routinely practiced in the art at the time the claimed invention was made as taught by Giaever and Dickenson.

Giaever teaches a similar assembly comprising a plastic base, a glass layer over the plastic and an intervening metallic layer wherein the metallic layer is “non-transparent” (Column 2, lines 51-57 and Fig. 1) wherein the layered assembly produces “very good” interference colors from visible light and high index of refraction (Column 4, lines 10-20).

Dickenson also teaches a similar assembly comprising a plastic base layer e.g. plastics or optical fiber bundles (page 10, line 32), a glass layer forward of the base plate i.e. glass microspheres (page 16, lines 7 and 10), an array of polymers having a pattern of features on a front surface of the glass i.e. biopolymers immobilized on the arrayed microspheres (page 8, lines 15-22) and a layer between the base and glass layers that blocks illuminating light from

Art Unit: 1634

reaching the plastic base (page 11, lines 18-25) and wherein the array assembly is flexible i.e. fiber optic bundles (page 10, line 32) wherein the metallic coating provides for more efficient signal collection (page 11, lines 18-19).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the metallic layers of Giaever and/or Dickenson to the metallic layer in the assembly method of Chen. One of ordinary skill in the art would have been motivated to do so for the expected benefit of more efficient signal collection as taught by Dickenson (page 11, lines 18-10) and/or for the “very good” interference colors from visible light and high index of refraction as taught by Giaever (Column 4, lines 10-20).

Regarding Claim 15, Chen et al disclose the method wherein the intervening layer comprising a reflective (metallic) layer (¶ 66, lines 9-15) and Dickinson defines the metallic layer as reflective (page 11, lines 18-25).

Regarding Claim 16, Chen et al disclose the array wherein the reflective layer comprises a metal (¶ 66, lines 9-15).

Regarding Claim 17, Chen et al disclose the array wherein the reflective layer comprises dielectric material as defined by Giaever who also teaches the reflective layer comprises layers of dielectric materials (Column 3, lines 11-47).

Regarding Claim 20, Chen et al disclose the assembly further comprising an identifier on the back of the base layer (¶ 118).

Regarding Claim 22, Chen et al disclose the method wherein assembly is in the form of an elongated web i.e. elongated (e.g. ¶ 77). It is noted that the claim requires the assembly to “in the form of an elongated web”. The claim does not require the assembly be a web, but merely in the form of an elongated web. Chen teaches their assembly is elongated (e.g. Fig. 1, 3, 4).

Art Unit: 1634

Regarding Claim 23, Chen et al disclose the method wherein multiple arrays are formed by depositing drops onto the front surface of the glass layer wherein the drops contain polymers or polymer precursors (e.g. Fig. 3 and ¶ 80, 97 and 117).

Regarding Claim 24, Chen et al disclose the method wherein the polymers are polynucleotides or peptides (¶ 80).

Regarding Claim 26, Chen et al disclose the method wherein the layer between the base and glass layers is opaque (i.e. metallic, ¶ 66, lines 9-15) and Giaever teaches the metallic layers are opaque i.e. non-transparent (Abstract).

Regarding Claim 27, Chen et al disclose the assembly wherein a metallic layer sandwiched between the glass and plastic layers (¶ 66) but they are silent regarding a bonding layer between the metal and plastic. However, Giaever teach a similarly layered assembly wherein they teach that the metal layer must remain "firmly adhered to the substrate" with change of temperature (Column 3, lines 24-29). This clearly suggests that the metal be bonded to the base layer. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply an adhering layer between the metal and base layers of Chen et al. One of ordinary skill in the art would have been motivated to do so based on the teaching of Giaever and for the expected benefit of keeping the metal "firmly adhered to the substrate" as taught by Giaever (Column 3, lines 24-29).

Regarding Claim 28, Chen et al disclose the method wherein a metallic layer sandwiched between the glass and plastic layers (¶ 66) but they are silent regarding a bonding layer between the metal and plastic. However, Giaever teach a similarly layered assembly wherein they teach that the metal layer must remain "firmly adhered to the substrate" with change of temperature (Column 3, lines 24-29). This clearly suggests that the metal be bonded to the base layer. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply an adhering layer between the metal and base layers of Chen et al. One of ordinary skill in the art would have been motivated to do so based

Art Unit: 1634

on the teaching of Giaever and for the expected benefit of keeping the metal “firmly adhered to the substrate” as taught by Giaever (Column 3, lines 24-29).

(10) Response to Argument

I. Claims 1-2, 10, 13-14, 20, 24:

Appellant asserts that there is no motivation to combine the teaching of Giaever or Dickinson with that of Chen. Appellant asserts that Giaever discloses a transparent metal layer in the form of globules (13) whereby “very good” interference colors are produced, but does not teach that the “very good” interference is due to the metal layer between the plastic base and glass layer. The assertion is noted, however, in contrast to the assertion, Giaever specifically teaches “The combination as described herein of the first metal layer, the dielectric layer, and the second layer of metal produces very good interference”. (Column 4, lines 10-13). The reference goes on to speculate which components are responsible “No explanation for this is yet available due to the complexity of the physics involved.” (Column 4, lines 13-15). Therefore, Appellants assertion that the globules are responsible for the very good interference contradicts the fact that the reference is unable to define the source of the good interference.

Appellant further asserts that Dickinson does not teach a continuous glass layer and therefore the “more efficient signal collection” is not due to a metal layer that separates a plastic layer and continuous glass layer as claimed. Appellant asserts that the metal layer “simply served to reflect light back to the bead....Accordingly, it is the interaction of the beads with the other layers that provide the beneficial property and not the mere presence of the metal coating”. The argument has been considered. However, Dickinson specifically teaches that the metal layer provides a substrate that is “more efficient at signal collection as a result of signal reflection”. In contrast to the assertion, Dickinson does not teach the improved signal collection is a result of the glass bead or combination of glass bead and metal layer.

Art Unit: 1634

Dickinson specifically teaches that the more efficient collection results from the metal layer which reflects the signal (page 11, lines 18-21).

Appellant summarizes by asserting that there is no motivation to combine the references because the motivation cited in the Office Action is due to design features that have nothing to do with the light blocking layer. The assertions are noted, but not convincing because as discussed above, the improved features cited in the Giaever and Dickinson require the light blocking layer.

II. Claims 3 and 26:

Appellant asserts that none of the cited references teach or suggest an opaque layer between the base and glass layers. Appellant states that the non-transparent layer of Giaever is not opaque. The argument has been considered. However, Giaever specifically teaches the non-transparent metal layer is "solid metal" (Abstract, line 3) and is "sufficiently thick so that the layer is not transparent to visible light (Column 3, lines 22-26). This clearly suggests the non-transparent solid metal layer is opaque. Furthermore, the instant specification (§ 55 of the pre-grant publication) teaches that an opaque layer blocks at least 10% of the illuminating light. Giaever illustrates light blockage. The figure illustrates illuminating light (single arrow toward the metal layer (11) and reflected/blocked light (single arrow illustrating light returning from metal layer (11)). The figure clearly illustrates that the non-transparent metal layer of Giaever blocks at least 10% of the light. Hence, the metal layer of Giaever clearly suggests the opaque layer as described in the specification.

III. Claims 4 and 15:

Appellant asserts that Dickenson teaches away from the claimed invention. Appellant asserts that the increased signal collection of Dickenson result from the interaction of beads

Art Unit: 1634

and metal coating and therefore teaches away from the claimed invention because it teaches that signal is increased using a collection of beads rather than a continuous glass layer as claimed. The argument has been considered. However, Dickinson specifically teaches that the metal layer provides a substrate that is “more efficient at signal collection as a result of signal reflection”. In contrast to the assertion, Dickinson does not teach the improved signal collection is a result of the glass beads or combination of glass beads and metal layer. Dickinson specifically teaches that the more efficient collection results from the metal layer which reflects the signal (page 11, lines 18-21).

IV. Claims 5 and 16:

Appellant asserts that none of the cited references teach a reflective metal layer between a base and glass layer that blocks at least 10% of illuminating light. The assertion is noted, however, Giaever specifically teaches a metal reflective layer and illustrates light blockage. The figure illustrates illuminating light (single arrow toward the metal layer (11) and reflected/blocked light (single arrow illustrating light returning from metal layer (11)). Furthermore, Dickinson teaches the metal layer is a reflecting metal layer (page 11, lines 18-21).

V. Claims 6 and 17:

Appellant asserts that Chen makes not reference to the in between layer being a dielectric material and that Giaever makes no reference to a layer that includes multiple layers of dielectric material. The claims are drawn to a reflective layer comprising multiple layers of dielectric material. As stated above, Chen et al disclose the array wherein the reflective layer comprises dielectric material (§ 66) as defined by Giaever who also teach the reflective layer comprises layers of dielectric materials (Column 3, lines 11-47).

Art Unit: 1634

VI. Claim 9:

Appellant asserts that the 10 % absorption differentiates the claimed plastic layer over the cited art. The assertion is noted. However, Appellant has not pointed to any teaching in the specification or factual evidence to support the asserted difference. Furthermore, the specification does not define any structural or compositional elements that provide the claimed absorption. Therefore, given the broadest reasonable interpretation of the claim in view of the specification, the claimed absorption is encompassed by the plastic layers cited in the art

VII. Claims 12 and 22:

Appellant asserts that the cited art does not teach or suggest the elongated web. The assertion is noted. However, the instant specification defines a "web" as "a long continuous piece of substrate material having a length greater than a width." Chen specifically teaches an elongated substrate (§ 77). Furthermore, the claim is drawn to an assembly in the "form" of an elongated web. Given the definition of "web" in the instant specification and the broad claim language, the elongated substrate of Chen is encompassed by the claimed invention.

VIII. Claims 27 and 28:

Appellant asserts that the cited references do not teach or suggest a bonding layer between the base layer and light blocking layer. The assertion is noted, however as cited above, Giaever is clearly interested in adherence of the light blocking layer to the base layer and teach that the metal layer must remain "firmly adhered to the substrate" with change of temperature (Column 3, lines 24-29). This clearly suggests that the metal be bonded to the base layer. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply an adhering layer between the metal and base layers of

Art Unit: 1634

Chen et al. One of ordinary skill in the art would have been motivated to do so based on the teaching of Giaever and for the expected benefit of keeping the metal "firmly adhered to the substrate" as taught by Giaever (Column 3, lines 24-29).

NEW GROUND(S) OF REJECTION

The new grounds for rejection are provided to add the Giaever and Dickenson references to the form paragraph below. The references were inadvertently omitted in the Final Office Action. Claims 7 and 18 depend from Claims 1 and 14 respectively. As such, references cited for the rejections of Claims 1 and 14 were inadvertently omitted in the discussion of Claims 7 and 18. To clarify the record, the rejections of Claim 7 and 18 are considered new grounds of rejection. However, the text of the rejection is unchanged.

Claims 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (U.S. Patent Application Publication No. 2001/0051714, filed 10 January 2001) in view of Giaever (U.S. Patent No. 3,979,184, issued 7 September 1976) or Dickinson (WO 01/18524, published 15 March 2001).

Regarding Claims 7 and 18, Chen et al disclose an array assembly and method of making the assembly comprising a plastic base layer a glass layer forward of the base plate (§ 66), and an array of polymers having a pattern of features on a front (upper) surface of the glass (§ 57) wherein the substrate has a thickness (diameter) of 125 μ m and teaches that other diameters are available (§ 68) but they do not specifically teach a thickness of 40 to 200nm.

Art Unit: 1634

However, the courts have stated that “where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.” *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984). Therefore, the claimed thickness does not distinguish the instant invention over the glass layer of Chen et al because one of ordinary skill in the art would have expected the glass layers to perform equally. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the glass thickness of Chen et al based on their suggestion to do so (§ 68) for the obvious benefits of optimizing the thickness to thereby optimize results.

It is noted that *In re Aller*, 220 F.2d 454,456, 105 USPQ 233,235 states where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum by routine experimentation.

(10) Response to Argument

IX. Claims 7 and 18:

Appellant asserts that Chen does not teach the light blocking properties of the metal layer. The assertion is noted. However as discussed above regarding Claims 1 and 14, Chen teaches a metal layer between the plastic base and glass layer (§ 66). Furthermore, Giaever and Dickenson both specifically teach metal layers that block light, as thoroughly discussed in section I above.

(11) Related Proceeding(s) Appendix

Art Unit: 1634

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

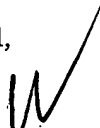
(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Art Unit: 1634


Respectfully submitted,

BJ Forman


BJ FORMAN, PH.D.
PRIMARY EXAMINER

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:


George Elliott



George C. Elliott, Ph.D
Director
Technology Center 1600

Conferees:

Ram Shukla, Ph.D., S.P.E.

Ardin Marschel, Ph.D., S.P.E.


ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER


RAM R. SHUKLA, PH.D.
SUPERVISORY PATENT EXAMINER